

JOHN P. ASKIN

PLAINTIFF

v. **NATIONAL COLLEGIATE ATHLETIC ASSOCIATION’S**
MOTION TO DISMISS

UNIVERSITY OF NOTRE DAME, DU
LAC and NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION

DEFENDANTS

Defendant, National Collegiate Athletic Association (“NCAA”), moves the Court under CR 12.02 to dismiss all claims asserted against it. The claims asserted against the NCAA are barred by the applicable statute of limitations and statute of repose. Plaintiff John Askin allegedly played NCAA football from 1982 to 1986.

Askin asserts four causes of action against NCAA all of which arise out of events that allegedly occurred in the 1980’s: negligence (Count I); fraudulent concealment (Count II); constructive fraud (Count III); and punitive damages (Count IV). Askin alleges that NCAA owed him a duty to protect his health and safety but breached that duty by (i) failing to “supervise, regulate and monitor the rules of its governed sports and provide appropriate and up-to-date guidance and regulations to minimize the risk of injury to collegiate football players” (Compl. at ¶ 157); (ii) by failing to educate Notre Dame and Notre Dame football players, including John Askin, on the proper ways to evaluate and treat concussive events during football games and practices” (Compl. at ¶ 158); and (iii) by failing to “warn student-athletes of the dangers of sub-concussive and concussive injuries and of the risks associated with football.” (Compl. at ¶ 160)

Askin’s fraudulent concealment and constructive fraud claims are based on allegations that “[a]s early as 1933, and certainly between 1982-86 . . . the NCAA . . . knew that repetitive head impacts in football games and full-contact practices created a substantial risk of latent brain disease to student-athletes.” (*Id.* ¶¶ 181, 192) The claims allege that “[d]espite this knowledge and awareness . . . the NCAA failed to inform football players, including John Askin, of these risks with the intent of misleading them.” (*Id.* ¶¶ 183, 194)

While the particular allegations against the NCAA are in many ways different from the allegations against Notre Dame, the claims against both parties are time barred for the same reason. In order to prevail against either party, Askin must prove that he had no actual or constructive knowledge of an injury until 2018. The factual allegations pleaded in the Complaint—that Askin suffered concussions and other head injuries and experienced concussive symptoms between 1982 and 1986—establish that, his claims are time barred as a matter of law because he seeks recovery for the long-term effects of injuries he admits he suffered years ago. Askin cannot prove any set of facts entitling him to relief in this case.

In further support of this motion, NCAA adopts and incorporates by reference the arguments and authorities asserted in Notre Dame’s thorough and well-reasoned Memorandum of Law in Support of its Motion to Dismiss.

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CERTIFICATE OF SERVICE

I certify that on April 19, 2019, a copy of the foregoing was filed electronically through the KYeCourts system, which will serve a copy on the following counsel of record in this case:

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